# In the Supreme Court
OF THE
# United States

Office - Supreme Court
DEC 4 19
CHARLES ELMORE

OCTOBER TERM, 1942

**No. 413**

PEOPLE OF THE STATE OF CALIFORNIA, on the relation of Charles J. McColgan, as State Franchise Tax Commissioner,
*Petitioner,*

vs.

JOHN HOWARD BRUCE,
*Respondent.*

## PETITION FOR A REHEARING OF ORDER DENYING CERTIORARI.

EARL WARREN,
Attorney General of the State of California,
H. H. LINNEY,
Assistant Attorney General of the State of California,
JAMES E. SABINE,
Deputy Attorney General of the State of California,
600 State Building, San Francisco, California,
*Counsel for Petitioner.*

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

## Subject Index


Page

I. If the decision of the Circuit Court of Appeals is left in force there will have been an unwarranted abdication of federal jurisdiction ..... 2


## Table of Authorities Cited


| Cases | Pages |
|---|---|
| Chisholm v. Georgia, 2 Dall. 419 | 2, 3 |
| Cohens v. Virginia, 6 Wheat. 264 | 3 |
| Massachusetts v. Missouri, 308 U. S. 1 | 2, 3 |
| Milwaukee County v. M. E. White Co., 296 U. S. 268 | 3 |
| Monaco v. Mississippi, 292 U. S. 313 | 2 |
| Wisconsin v. Pelican Insurance Co., 127 U. S. 265 | 2 |

### Legal Periodical

Chafee, "Federal Interpleader Since the Act of 1936", 49 Yale L. J. 377, 392, 393 ..... 3, 4

# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1942

No. 413

PEOPLE OF THE STATE OF CALIFORNIA, on the relation of Charles J. McColgan, as State Franchise Tax Commissioner,
*Petitioner,*

vs.

JOHN HOWARD BRUCE,
*Respondent.*

## PETITION FOR A REHEARING OF ORDER DENYING CERTIORARI.

*To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:*

Petitioner respectfully petitions for a rehearing of the order of this court issued November 9, 1942, denying petition for certiorari in the above entitled matter and petitioner sets forth as ground for granting said petition for rehearing and said petition for certiorari:

## I. IF THE DECISION OF THE CIRCUIT COURT OF APPEALS IS LEFT IN FORCE THERE WILL HAVE BEEN AN UNWARRANTED ABDICATION OF FEDERAL JURISDICTION.

We are in sympathy with the apprehension this court expressed in *Massachusetts v. Missouri,* 308 U.S. 1, 19, that if, without reserve, it were to entertain actions by states to recover taxes claimed to be payable by citizens of other states, serious interference with the discharge by this court of its duty in deciding the cases and controversies appropriately brought before it might result.

However, because the states still possess attributes of sovereignty (*Monaco v. Mississippi,* 292 U.S. 313, 322, and cases cited) and because of the impartiality of federal tribunals (*Wisconsin v. Pelican Ins. Co.,* 127 U.S. 265, 289; *Chisholm v. Georgia,* 2 Dall. 419, 475) it seems appropriate and within the intent of the Constitution that a state be permitted to sue a citizen of another state in some federal court.

In *Wisconsin v. Pelican Insurance Co.,* 127 U.S. 265, 289, this court said:

> "As to 'controversies between a State and citizens of another State.' The object of vesting in the courts of the United States jurisdiction of suits by one State against the citizens of another was to enable such controversies to be determined by a national tribunal, and thereby to avoid the partiality, or suspicion of partiality, which might exist if the plaintiff State were compelled to resort to the courts of the State of which the defendants were citizens. Federalist, No. 80; Chief Justice Jay, in Chisholm v. Georgia, 2 Dall. 419, 475; Story on the Constitution, § 1638, 1682. * * *"

The constitutional purpose in extending the judicial power to controversies between a state and citizens of another state also is expressed in *Chisholm v. Georgia,* 2 Dall. 419, 475:

> "* * * 8th. To controversies between a state and citizens of another state; because, in case a state (that is, all the citizens of it) has demands against some citizens of another state, it is better that she should prosecute their demands in a national court, than in a court of the state to which those citizens belong; the danger of irritation and criminations arising from apprehensions and suspicions of partiality, being thereby obviated. * * *."

In *Massachusetts v. Missouri,* supra, at pages 19 and 20, this court, after stating reasons why it would decline to entertain jurisdiction of an original proceeding by a state to recover taxes from citizens of another state, appears to suggest that such a suit could be brought in a federal district court. The quotations in the final paragraph of that opinion from *Cohens v. Virginia,* 6 Wheat. 264, 398, 399, from the Attorney General of Missouri and from *Milwaukee County v. M. E. White Co.,* 296 U.S. 268, 272, seem strongly to support this view. To the list, set forth in the petition for certiorari herein, of writers of articles and notes in legal periodicals who have so interpreted the opinion in *Massachusetts v. Missouri,* should be added Chafee, "Federal Interpleader Since the Act of 1936", 49 Yale L. J. 377, 392, 393.

The fact that suit in a federal district court would relieve this court of the burden of an original proceeding, while at the same time according to the sovereign

states an impartial hearing in a national tribunal, serves to indicate that the federal district court is the appropriate forum for this suit. (Chafee, supra, at pages 392, 393.) In our petition for certiorari we have endeavored to set forth bases upon which the jurisdiction of the federal district court may be sustained. If the petition is not granted and the decision of the circuit court of appeals reversed, there will have been a complete abdication of jurisdiction by the federal courts, in such suits, contrary to the evident intent of the Constitution.

Dated, San Francisco, California,
December 1, 1942.

Respectfully submitted,

EARL WARREN,
Attorney General of the State of California,
H. H. LINNEY,
Assistant Attorney General of the State of California,
JAMES E. SABINE,
Deputy Attorney General of the State of California,
*Counsel for Petitioner.*

CERTIFICATE OF COUNSEL.

Counsel for the above named petitioner do hereby certify that the foregoing petition for a rehearing is presented in good faith and not for delay.

Dated, San Francisco, California,
December 1, 1942.

EARL WARREN,
Attorney General of the State of California,
H. H. LINNEY,
Assistant Attorney General of the State of California,
JAMES E. SABINE,
Deputy Attorney General of the State of California,
*Counsel for Petitioner.*